APPEAL NO. 022254
FILED OCTOBER 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 15, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) sustained a repetitive trauma injury; that the date of the injury is _____; that the appellant/cross-respondent (self-insured) is relieved of liability because the claimant failed to timely notify the employer of the claimed injury; and that because the claimant did not sustain a compensable injury, she has no disability.

The self-insured appeals the hearing officer's determinations that the claimant sustained a repetitive trauma injury and the hearing officer's Finding of Fact No. 8 that due to the claimed injury the claimant had disability "for the period beginning on _____ and continuing through December 4, 2001 and for the period beginning on December 19, 2001 and continuing through the date of this hearing." The claimant cross-appeals the hearing officer's determinations that she knew or reasonably should have known on _____, that she had a work-related injury; that her date of injury is _____; that she did not give the employer notice of a work-related injury, nor did the employer have actual notice of the alleged injury within 30 days; that there was no good cause for her failure to give timely notice; and that because she did not sustain a compensable injury, she does not have disability. The self-insured files a response to the claimant's appeal, urging affirmance. There is no response from the claimant to the self-insured's appeal contained in our file.

DECISION

Affirmed.

SELF-INSURED'S APPEAL

Even though the self-insured was held to not be liable on this claim because the claimant failed to timely notify the employer of her injury, the self-insured appeals the determinations that were adverse to its positions at the CCH.

The hearing officer found that the claimant sustained an injury as defined in Section 401.011(26) and that the injury was sustained in the course and scope of employment. This finding does not automatically equate to a compensable injury. The hearing officer went on to determine essentially that the claimant did not timely report her injury as required by Section 409.001, and that the self-insured was therefore relieved of liability under Section 409.002, as the injury was not compensable. The hearing officer further found that due to the "claimed injury," the claimant was unable to obtain and retain employment at the preinjury wage. This does not amount to a finding of disability because by definition in Section 401.011(16), disability requires a

compensable injury, not just a "claimed injury." The hearing officer clearly believed that the claimant sustained an injury as she alleged, but because it was not timely reported, it was not compensable. Without a compensable injury, there can be no disability.

The hearing officer's findings of fact and conclusions of law are supported by the evidence and are legally correct. Insofar as the self-insured's appeal amounts to a dispute on the injury determination, we find that the hearing officer's determination that there was an injury is not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

CLAIMANT'S CROSS-APPEAL

There was conflicting evidence presented during the CCH regarding the complained-of determinations, especially the key determination as to the date of injury. The hearing officer specifically addressed the date of injury issue, noting that the claimant's denial of a discussion with her treating doctor about her injury being work related was not credible. He stated that his determination that the injury was not timely reported to the employer, and that the self-insured was therefore relieved of liability for the claimant's injury, is a "harsh result," but it "is the result the law requires." Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and determine what facts have been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*; Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Michael B. McShane
Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Margaret L. Turner
Appeals Judge